

Chapter 16 - PUBLIC UTILITIES

Section 16.01 CABLE TELEVISION FRANCHISE

(a) **Granting of Authority.** This ordinance authorizes the Town Board of the Town of Turtle to grant to a grantee, its successors and assignees a nonexclusive franchise to install, maintain and operate a cable television system for the distribution of television signals, radio signals, closed circuit television programs, data transmission and other forms of electronic entertainment and information which may now exist or may be developed in the future. This ordinance may be amended from time to time through the enactment of amendments thereto. The term of any franchise shall be a period of not more than 15 years. Specific starting and expiration dates shall be incorporated in a separate agreement with the grantee.

(b) **Interest on Late Payments.** If any payment, such as franchise fees, recomputed franchise fees, fines or other penalty, is not made within the time specified in this ordinance, the grantee shall pay interest on the amount which is overdue. The interest shall be calculated at the rate of 12% or the highest rate permitted by law, whichever is less.

(c) **Definitions.** For the purpose of this ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural.

(1) **Cable System.** Coaxial or other cables, wave guides or other conductors and equipment for providing entertainment and/or information services by cable or through other facilities as herein contemplated and may include closed circuit special event programs and educational television.

(2) **Channel.** A 6 MHZ frequency band, which is capable of carrying either one standard video signal, a number of audio, digital or other nonvideo signals or some combination of such signals.

(3) **Town.** The Town of Turtle, Rock County, Wisconsin.

(4) **Town Board.** The Town Board of Supervisors of the Town of Turtle.

(5) **Grantee.** The person or corporation to whom or which a franchise under this ordinance is granted by the Town Board and the lawful successors or assignees of such person or corporation.

(6) **Gross Revenues.** Any revenue derived by grantee, its affiliates, subsidiaries, parent and any person in which grantee has a financial interest of 5% or more from or in connection with the operation of the Town cable system including, but not limited to, basic

subscriber service monthly fees, pay cable fees, leased channel fees, collection fees, converter rentals, studio rental and production equipment. The term does not include installation or reconnection fees, advertising revenues or any taxes on services furnished by grantee and imposed directly upon any subscriber or used by the State, Town or other governmental unit or any revenues derived from activities not directly related to the cable system operation.

(7) **Street.** The surface of and the space above and below any public street, road, highway, freeway, lane, path, public way, alley, court, sidewalk, boulevard, parkway, drive or any easement or rights-of-way now or hereafter held by the Town which shall within its proper use and meaning in the sole opinion of the Town entitle grantee to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a system.

(8) **Subscriber.** Any person or entity receiving for any purpose the services of the Grantee herein.

(d) **Renewal.**

(1) The grantee must file for renewal at least 30 months before the expiration of the franchise. The Town:

a. Must consider the renewal application within 120 days of submission of the application and conduct any proceedings necessary to adequately consider the application.

b. May not request, accept or consider any other franchise application until the grantee's application is denied or approved.

(2) The Town shall:

a. Negotiate in good faith with the grantee regarding franchise renewal within 60 days after the completion of proceedings pursuant to subsection (1).

b. Make a preliminary decision on granting or denying renewal within 4 months after receipt of an application.

c. In the case of denial of an application, notify the grantee by written statement within 7 days after such decision of the reasons for the denial.

(3) The grantee if adversely affected or aggrieved by a final decision of the Town made pursuant to subsection (2) may appeal such decision in any court of competent jurisdiction. The franchise shall remain in effect pending the completion of such appeal.

(4) Both the Town and grantee shall comply with all the provisions of the Cable Communications Policy Act of 1984, Public Law Number 98-549, 98 Stat. 2779, as amended, regarding renewal procedures. In the event that this Act changes, the Town shall conduct renewal procedures in accordance with then applicable law.

(e) Removal or Purchase of Cable Assets on Termination or Expiration.

(1) Should the grantee's franchise be terminated or expire and there is no judicial or administrative review of the termination or expiration taking place, the grantee shall begin removal within 90 days of termination or expiration of all property owned by the grantee and placed on a public right-of-way unless permitted by the Town to abandon such property or transfer it to a purchaser.

(2) In the event that a franchise has terminated by expiration or revocation, the Town shall have an option to the extent then permitted by existing law to either purchase the tangible assets of the grantee's cable television system previously governed by the franchise at fair market value as determined by any reasonable offer which the grantee has accepted or assign such rights to purchase or require removal of all grantee's property located within the public ways of the Town at the grantee's expense. Such an option must be exercised within one year from the date of the revocation of the franchise, the entry of a final judgment by a court reviewing the question of the revocation or termination or the entry of a final order upon appeal of the same, whichever is later.

(f) Ownership Transfers.

(1) **Binding Effect.** All of the rights and privileges and all the obligations, duties and liabilities created by this ordinance shall pass to and be binding upon the successors of the Town and the successors and assigns of the grantee and the same shall not be assigned or transferred without the written approval of the Town hereunder which approval shall not be unreasonably withheld provided, however, that this subsection shall not prevent the assignment of the franchise or the cable system by the grantee as security for debt without such approval and provided further that transfers or assignments of this franchise between any parent and subsidiary corporation or between entities of which at least 51% of the beneficial ownership is held by the grantee or any parent corporation shall be permitted without the prior approval of the Town.

(2) **Assignment.** The sale, transfer or assignment of 10% or more of ownership of the cable system of the grantee to a single third party shall be considered an assignment subject to the provisions of this section.

(3) Transfer Procedure.

a. The parties to the sale or transfer of a franchise shall make a written request to the Town for its approval of a sale or transfer of a franchise.

b. The Town shall reply in writing within 30 days of the request and shall indicate approval of the request or its determination that a public hearing is necessary due to potential adverse effect on the grantee's subscribers.

c. If a public hearing is deemed necessary, such hearing shall be conducted within 30 days of such determination and notice of any such hearing shall be given 14 days prior to the hearing by publishing notice thereof once in a newspaper of general circulation in the area being served by the grantee. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the Town.

d. Within 30 days after the public hearing, the Town shall approve or deny in writing the sale or transfer request.

e. Grantee upon transfer shall within 30 days thereafter file with the Town a copy of the deed, agreement or other written instrument evidencing such sale, transfer of ownership or control or lease, certified and sworn to be correct by the grantee.

(g) **Franchise Territory.** The franchise is for the present territorial limits of the Town and for any area henceforth added thereto. The grantee must make services of the cable system available to all residences and commercial and institutional establishments within the Town equally, providing adequate and appropriate private and public easements and access can be reasonably acquired by the grantee and that at least 35 subscribers will be served for each mile of plat necessary to serve them. Upon renewal of a franchise, no currently served areas may be deleted.

(h) **Subscriber Privacy.**

(1) The grantee shall comply with all the provisions of the Cable Communications Policy Act of 1984, as amended, regarding protection of subscriber privacy.

(2) The subscriber or user shall retain the right to disconnect his or her terminal, but shall be responsible for charges until the grantee is notified to terminate service.

(i) **Technical Performance.** The cable system shall be operated to comply with all guidelines and standards set by the Federal Communications Commission for signal quality and leakage. The Town reserves the right to test the system and independently measure the signal quality. The cable system shall comply at all times with the applicable National Electrical Code of the National Fire Protection Association.

(j) **Open Books and Records.**

(1) The Town may request certification of receipts by the grantee to verify the accuracy of franchise fee payments. The Town may conduct an audit at Town expense no more than once in a 12 month period of the financial records of the grantee, including financial statements to verify the accuracy of franchise fee payments.

(2) The authorized officers of the Town shall have the right to inspect at any time during normal business hours, upon 5 days' written notice, all books, records, maps, plans, financial statements, service complaint logs, performance test results, records of request for service and other like materials of grantee which relate to the operation of this franchise, but not more frequently than once annually.

(3) Any records or information received by the Town from the grantee relating to financial information, sales figures or to processes or production unique to the grantee or which would tend to adversely affect the competitive position of the grantee are only for the confidential use of the Town in the administration of this ordinance, unless the grantee expressly agrees to their publication or availability to the general public. Nothing in this subsection prevents the use of the records or information by the Town in compiling or publishing analyses or summaries relating to the information.

(k) Subscriber Service.

(1) Cable System Office Hours and Telephone Availability.

a. The grantee will maintain a local, toll-free telephone access line which will be available to its subscribers 24 hours a day, 7 days a week.

1. Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

2. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

b. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed 30 seconds. These standards shall be met no less than 90% of the time under normal operating conditions, measured on a quarterly basis.

c. The grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

d. Under normal operating conditions, the customer will receive a busy signal less than 3% of the time.

e. Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, Outages and Service Calls. Under normal operating conditions, each of the following 4 standards will be met no less than 95% of the time measured on a quarterly basis:

a. Standard installations will be performed within 7 business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

b. Excluding conditions beyond the control of the grantee, the grantee will begin working on the "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The grantee must begin actions to correct other service problems the next business day after notification of the service problem.

c. The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a 4-hour time block during normal business hours. The grantee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.

d. The grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

e. If the grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Subscribers.

a. Notification to Subscribers.

1. The grantee shall provide written information on each of the following areas at the time and installation of service, at least annually to all subscribers, and at any time upon request:

[a] Products and services offered;

[b] Prices and options for programming services and conditions of subscription to programming and other services;

[c] Installation and service maintenance policies;

[d] Instructions on how to use the cable service;

[e] Channel positions of programming carried on the system; and,

[f] Billing and complaint procedures.

2. Customers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of 30 days in advance of such a change if the change is within the control of the grantee. In addition, the grantee shall notify subscribers 30 days in advance of any significant changes in the other information required by the preceding paragraph.

(b) Billing.

1. Bills must be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

2. In case of a billing dispute, the grantee must respond to a written complaint from a subscriber within 30 days.

(c) Refunds. Refund checks will be issued promptly, but no later than either:

1. The customer's next billing cycle following resolution of the request or 30 days, whichever is earlier; or

2. The return of the equipment supplied by the grantee if service is terminated.

(d) Credits. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(4) Definitions.

a. **Normal Business Hours.** The term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

b. **Normal Operating Conditions.** The term "normal operating conditions" means those service conditions which are within the control of the grantee. Those conditions which are not within the control of the grantee include, but are not limited to, natural disasters, civil disturbances, power outage, telephone network outages and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods and maintenance or upgrade of the cable system.

c. **Service Interruption.** The term "service interruption" means the loss of picture or sound on one or more cable channels.

(5) **Amendments to Section.** It is intended that the provisions of this section fully and accurately set forth all relevant portions of 47 CFR, Part 76, Subpart H, pertaining to the Town's regulation of customer service. Future amendments to those sections of 47 CFR, Part 76, Subpart H, which pertain to the Town's regulation of customer service are hereby adopted by reference. Any provision in this section which is inconsistent with such future amendments shall not be enforced.

(1) **Description of System.** Within 60 days of the effective date of the grant of a franchise under this chapter, the grantee shall provide the Town with a map of the Town cable system. The map shall be updated at least annually thereafter.

(m) **Conditions of Street Occupancy.**

(1) **Use.** All transmission and distribution structures, lines and equipment erected by grantee within the Town shall be so located as not to cause interference with the proper use of streets, alleys and other public ways and places and not to cause interference with the rights or reasonable convenience of property owners who adjoin any of the streets, alleys or other public ways and places.

(2) **Street Use Not Exclusive.** The right to use and occupy such streets and roads for the purpose set forth shall not be exclusive and the Town reserves the right to grant a similar right or use of such streets and roads to any person at any time during the period of the franchise issued pursuant to this ordinance. The grantee has the duty and responsibility to obtain and/or establish the existence of a private easement or dedication for its use. The Town shall have no affirmative access to or perfect a private easement or dedication or expand any existing easement or dedication for use by grantee.

(3) **Restoration.** In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the grantee shall first give notice to the Town Board of any contemplated disturbances of pavement, sidewalk, driveway or other surfacing and shall at its own cost and expense and in a manner approved by the Town Board replace and restore all pavement, sidewalk, driveway or other surface of any street or alley disturbed in as good condition as before such work was commenced. The grantee shall otherwise comply with the Town ordinances relating to street openings.

(4) **Relocation.** If at any time during the period of this franchise the Town shall elect to alter or change the location or grade of any street, alley or other public way, the grantee upon reasonable notice by the Town shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other equipment at its own expense. If any construction by the grantee is in violation of the provisions of subsection (1), the grantee shall likewise, upon reasonable notice by the Town, remove, relay and relocate its property in such a manner as to remedy such violation at its own expense.

(5) **Placement of Equipment.** The grantee shall not place poles or other equipment where the same will interfere with any gas, electric, telephone or other equipment, water hydrant or main and all such poles or other equipment placed in any street shall be placed between the outer edge of sidewalk and the curb line and those placed in alleys shall be placed close to the line of the lot abutting on such alley in such a manner as not to interfere with the usual travel on the streets, alleys and public ways. However, nothing in this ordinance shall prohibit the use by the grantee of existing public utility poles where practical, providing mutually satisfactory rental agreements can be entered into.

(6) **Temporary Removal of Wire for Building Move.** The grantee shall, on the request of any person holding a building moving permit issued by the Town, temporarily raise or lower its wires to permit the moving of buildings. The expenses of such temporary removal, raising or lowering of the wires shall be paid by the person requesting the same and the grantee may require such payment in advance. The grantee shall be given not less than 72 hours advance notice to arrange for such temporary wire changes.

(7) **Tree Trimming.** The grantee may trim trees within the public rights-of-way or on private property to the extent permitted by law, subject to any rules in respect thereto established by the Public Service Commission of the State of Wisconsin for electric utilities.

(n) **Indemnify.**

(1) **Indemnification.** The grantee shall defend and save the Town, its agents and employees harmless from all claims, damages, losses and expenses, including attorney's fees sustained by the Town on account of any suit, judgment, execution, claim or demand whatsoever, arising out of the installation, operation or maintenance of the cable system, except for acts of the Town, its agents or employees, unless such acts are at the request of or under the direction or supervision of the grantee.

(2) **Notification.** The Town shall notify the grantee within 10 days after the presentation of any claim or demand, either by suit or otherwise, made against the Town. The grantee shall furnish to the Town before a franchise becomes effective satisfactory evidence in writing that the grantee has in force and will maintain in force public liability insurance during the term of this franchise.

(3) **Liability Insurance.** The grantee shall maintain throughout the term of a franchise a general liability insurance policy naming the Town, its officers, Town Board, agents and employees as additional insureds with a responsible company authorized to do business in the State of Wisconsin and in a form satisfactory to the Town, protecting the Town and its officers, Town Board, agents and employees against liability for loss or damage for personal injury, death or property damage, occasioned by the operations of grantee under any franchise granted hereunder in the amount of \$1,000,000 for bodily injury or death to any one person, with the limit, however, of \$3,000,000 for bodily injury or death resulting from any one accident and \$500,000 for property damage resulting from any one accident. Grantee shall provide to the Town a certificate of insurance.

(o) **Default.** The occurrence of any one or more of the following events (herein called "event of default") shall constitute default under this ordinance:

(1) Default by the grantee in the payment of any franchise fee or other charge payable by the grantee as and when the same becomes due and payable and such default continues for a period of 30 days after receipt of notice from the Town that such payment is due.

(2) Default by the grantee in the performance of any other term, covenant or condition under the franchise or the inaccuracy in any material respect of any representation or information submitted by the grantee or in any document or certificate furnished to the Town in connection herewith.

(3) The making of any assignment, transfer or sale by the grantee of the ownership without the prior consent of the Town as required by this ordinance.

(p) **Remedies.** Upon the occurrence of any one or more events of default, the Town shall notify the grantee of the default in writing and the grantee shall have 30 days to cure the default from the date of delivery of the notice to grantee. If grantee fails to cure the default within the 30 day period, the Town at its option may:

(1) Proceed by appropriate court action to enforce performance by the grantee of the applicable terms and conditions of this ordinance or to recover from grantee any and all damages and expenses, including attorney's fees, which the Town shall have sustained by reason of the grantee's default in such performance or on account of the Town enforcement of its remedies hereunder; or

(2) Declare a franchise forfeited upon failure or refusal by the grantee to observe the terms and conditions set forth herein. Forfeiture shall be exercised by written notice to the grantee of the failure to cure the default, followed by the grantee's refusal to eliminate or correct such failure or violation within 60 days. In the event of any default, the Town may sue in its own name in the manner provided by law for the forfeiture of the franchise. The exercise of such remedy of forfeiture shall not preclude exercise of any other right of remedy given to the Town by law for their exercise concurrently or subsequently.

(q) Franchise Fee and Financial Reporting.

(1) **Franchise Fee.** As compensation for permission to use the streets and public ways of the Town for construction, operation, maintenance, modification and reconstruction of a cable system, the grantee shall pay to the Town an amount equal to 5% of the grantee's gross revenues.

(2) **Payment.** The franchise fee shall be paid on a calendar quarterly basis as follows:

- a. January - March by May 15.
- b. April - June by August 15.
- c. July - September by November 15.
- d. October - December by February 15.

(3) **Effect of Acceptance.** Acceptance of any payment by the Town shall not be construed as a release or as an accord and satisfaction of any claim the Town may have for further or additional sums payable as a franchise fee or for the performance of any other obligation of grantee.

(4) **Report.** No later than April 15 of each year, grantee shall present to the Town an annual report of gross revenues. The franchise fee payment shall be reconciled with this report.

(r) **Town Rights.** The right is hereby reserved to the Town to adopt in addition to the provisions contained in this ordinance and existing applicable ordinances such additional regulations as it shall find necessary in the exercise of its police powers. Such regulations by ordinance or otherwise shall be reasonable and not be in conflict with the rights granted in this ordinance and shall not be in conflict with the laws of the State of Wisconsin.

(s) **Theft of Service and Tampering.**

(1) No person, whether or not a subscriber to the cable system, may intentionally or knowingly damage or cause to be damaged any wire, cable, conduit, equipment or apparatus of grantee or commit any act with intent to cause such damage; tap, tamper with or otherwise connect any wire or device to a wire, cable, conduit, equipment and apparatus or appurtenances of grantee with the intent to obtain a signal or impulse from the cable system without authorization from the grantee; or obtain cable television or other communications service with intent to cheat or defraud grantee of any lawful charge to which it is entitled.

(2) No person shall, without the consent of the owner, willfully tamper with, remove or injure any cable, wires or other equipment used for the distribution of television signals, radio signals, pictures, programs, sounds or any other information or intelligence transmitted over the cable system serving the Town.

(t) **Acceptance by Grantee.** Any franchise granted under this ordinance shall be effective upon written acceptance of the franchise being filed with the Town Clerk within 30 days from the adoption hereof and the franchise shall continue in force for a period of not more than 15 years.

(u) **Incorporation of Amendments.** This franchise shall be amended to incorporate all amendments to the statutes, rules and regulations of the State of Wisconsin and the federal

government as they are promulgated. Any provision herein in conflict with or preempted by such rules and regulations or statutes shall be superseded.

(v) **Protection of Nonsubscribers.** Grantee shall at all times keep its cables and other appurtenances used for transmitting signals shielded in such a manner that there will be no interference with signals received by private receiver's sets owned by persons not subscribing to grantee's service.

(w) **Conditions of Required Line Extensions.**

(1) Grantee shall not be obligated to extend its cable network to additional subscribers unless the proposed subscribers shall be located within 30 feet of the existing network or unless at least 35 additional subscribers will be serviced per mile of cable extension required.

(2) In instances where the grantee is not required to provide service pursuant to this section, the grantee and subscriber may nevertheless contract to have service provided on terms and conditions agreeable to both the subscriber and grantee.

(x) **Grantee Rules.** The grantee may promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the grantee to exercise its rights and perform its obligations under this franchise and to assure uninterrupted service to all its subscribers. However, such rules, regulations, terms and conditions shall not be in conflict with the provisions of this ordinance or the laws of the State of Wisconsin or the federal government.

(y) **Waiver of Objections.** By the adoption of this ordinance, the Town expressly waives all objections it has or may have to the legal rights of the grantee to attach its cables, equipment and transmission lines to the poles of the Town, pursuant to an agreement or to the poles of the public utilities and the authority of such public utilities to grant such right to the grantee.

(z) **Grantee Without Recourse.**

(1) Grantee shall have no recourse whatsoever against the Town for any loss, cost or expense or damage arising out of any provisions or requirements of this franchise or because of the enforcement thereof by the Town.

(2) Grantee expressly acknowledges that in accepting this franchise it did so acknowledging that the Town has the power and authority to grant this franchise on the terms and conditions of this ordinance and waives any claim to the contrary.

(3) By acceptance of this franchise, grantee acknowledges that it has not been induced to enter into this franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of the Town or by any other third person concerning any term or condition of this franchise not expressed herein.

(4) Grantee further acknowledges by acceptance of this franchise that it has carefully read the terms and conditions hereof and is willing to and does accept all the risks of the meeting of such terms and conditions.

(aa) **Work Performed By Others.**

(1) All provisions of this franchise remain the responsibility of grantee.

(2) All provisions of this franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this franchise.

Section 16.02 TELECOMMUNICATIONS TOWERS

(a) **Intent.** The purpose of this section of the ordinance is to strike a balance between the federal interest concerning the construction, modification and placement of telecommunications towers and antennas for use in providing personal wireless services, and the legitimate interest of the Town in regulating local zoning. The goals of this ordinance are to protect land uses from potential adverse impacts of towers and antennas; minimize the total number of towers throughout the community; encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers; encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, sighting, landscape screening, and innovative camouflaging techniques; consider the public health and safety of communication towers, and avoid potential damage to adjacent properties from tower failure through engineering and careful sighting of tower structures. In furtherance of these goals, the Town shall give due consideration to the Zoning Map, and existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennas.

(b) **Definitions.** As used in this ordinance, the following terms shall have the meanings set forth herein:

(1) **Alternative Tower Structure.** Clock towers, bell steeples, light poles and similar mounting structures that camouflage or conceal the presence of antennas.

(2) **Antenna.** Any exterior transmitting or receiving device and mounting appurtenances mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.

(3) **Co-Location.** Location of multiple antennas of more than one commercial wireless communication service provider or government entity on a single tower or structure.

(4) **FAA.** Federal Aviation Administration.

(5) **FCC.** Federal Communications Commission.

(6) **Pre-Existing Tower/Antenna.** Any tower or antenna existing within the Town of Turtle before November 21, 1997.

(7) **Tower.** Any structure that is designed and constructed for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes, including self-supporting lattice towers, guyed towers, or mono-pole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. The term includes the structure and any support thereto.

(c) **Applicability.** The requirements of this section shall apply to all communication towers and antennas except that the ordinance shall not apply to towers and antennas owned and operated by federally licensed amateur radio station operators or are receive only antennas.

(d) **Antennas.** A permit is required from the Town of Turtle for the following permitted use:

(1) **Permitted Use.** Antennas shall be a permitted use and may be installed on a tower or alternative tower structure in the following zoning districts:

Exclusive Agricultural District One (A-1)
General Agricultural District Two (A-2)
Small Scale Agricultural District Three (A-3)
Local Commercial District (B-1)
Highland Conservation District Two (C-2)
Light Industrial District (M-1)

a. If an antenna is installed on a tower, the placement of accessory buildings and other supporting equipment used in connection with the antenna may not exceed 314 square feet. If the accessory building and other supporting equipment exceed 314 square feet, a conditional use permit must be obtained before installation of the antenna, buildings and supporting equipment.

b. If an antenna is installed on an alternative tower structure, the antenna may add no more than 20 feet to the height of the structure and the placement of accessory buildings and other supporting equipment used in connection with the antenna may not exceed 314 square feet. If the antenna adds more than 20 feet to the height of the structure or the accessory buildings and other supporting equipment exceed 314 square feet, a conditional use permit must be obtained before the installation of the antenna, buildings and supporting equipment.

(2) **Design.** The antenna, accessory buildings and supporting equipment must be of neutral color that is identical, or closely compatible with, the color of the supporting structure in order to limit visual impact.

(e) Communication Towers.

(1) Conditional Use. Communication towers shall be a conditional use in the following zoning districts:

Exclusive Agricultural District One (A-1)
General Agricultural District Two (A-2)
Small Scale Agricultural District Three (A-3)
Local Commercial District (B-1)
Highland Conservation District Two (C-2)
Light Industrial District (M-1)

(2) Utilizing Existing Structures. No permits for a new tower shall be issued unless the applicant demonstrates that the telecommunication equipment planned for the new tower cannot be accommodated on an existing or approved tower or structure. In the event the Town determines that it is necessary to consult with a third party in considering the factors listed below, all reasonable costs and expenses associated with such consultation shall be borne by the applicant. Such demonstration may include one or more of the following reasons:

a. No existing towers or structures are located within the geographic area required to meet the applicant's engineering requirements.

b. Existing towers or structures are not of sufficient height to meet the engineering requirements.

c. Existing towers or structures do not have the structural capacity to support the applicant's proposed antenna and related equipment and the existing tower or structure cannot be reinforced, modified or replaced to accommodate planned equipment at a reasonable cost.

d. The planned equipment would cause interference affecting the usability of the other existing or planned equipment at the tower or the existing antennas would cause interference with the applicant's proposed antenna and the interference cannot be prevented at a reasonable cost.

e. The fees, costs or contractual provisions required by the owner to share an existing tower or structure are cost prohibitive.

(f) General Requirements. In addition to compliance with all applicable regulations of this ordinance, the following standards shall apply for the installation of any tower or antenna:

(1) Building Codes and Safety Standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is constructed and maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association.

(2) **State or Federal Requirements.** All towers and antennas shall meet or exceed applicable standards and regulations of the FAA, FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas.

(3) **Co-Location.** A proposed tower shall be structurally and electrically designed to accommodate one or more antennas.

(4) **Height Restrictions.** The maximum height of a proposed telecommunication tower shall be 200 feet. This shall include any structures or equipment placed on the top of the tower such as lightning rods. However, the Town Board may waive this height restriction for a pre-existing tower.

(5) **Setbacks.** A tower shall be located not closer than a distance equal to 100% of height of the tower from any adjoining lot line. Guy wires and appurtenant equipment and buildings shall comply with requirements of the underlying zoning district in which the tower is located.

(6) **Design.** Proposed or modified towers shall blend in with the surrounding environment except as may be required by rules of the FAA or FCC. Any associated utility building shall also blend in with the character of the district in which it is located.

(7) **Separation Between Towers.** Separation distances between towers shall be measured by a straight line between the base of an existing tower and the base of a proposed tower. No proposed tower shall be permitted to be located within 2500 feet of an existing tower, unless for reasons beyond the applicant's control, such as unusual topography, no other option is available.

(8) **Signs.** No advertising material or signage other than warning or equipment information shall be allowed on any antenna or tower. This prohibition shall include the attachment to an antenna or tower of any flag, decorative sign, streamers, pennants, ribbons, spinners or waving, fluttering or revolving devices, but not including weather devices.

(9) **Lighting.** Towers shall not be artificially illuminated unless required by the FAA or any other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding area.

(10) **Fencing.** A tower shall be enclosed by security fencing not less than 6 feet in height and secured so that it is not accessible by the general public. Fence design, materials and colors shall reflect the character of the surrounding area.

(11) **Landscaping.** A buffer of plant materials to effectively screen the tower compound from public view and from adjacent properties shall be provided. The minimum buffer shall consist of a landscaped strip at least 5 feet in width outside the perimeter of the tower compound. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived. Existing mature tree growth and natural land forms shall be

preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.

(12) **Interference.** The tower shall be shielded, filtered and grounded in a manner consistent with the FCC and the Electronic Industries Association guidelines so as to minimize the possibility of interference with locally received transmissions. In the event any complaint of interference is received by the Town, and the interference is verified by a qualified engineer to be caused by the tower, the Town shall notify the owner and operator in writing and the owner and operator shall have a period of 30 days to investigate the complaint and respond to the Town. In the event it is determined that the tower is the source of the interference, the owner and operator shall take steps to correct the interference.

(g) Removal of Abandoned Antennas and Towers.

(1) **Abandonment.** An antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within 90 days of receipt of notice from the Town notifying the owner of such abandonment. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

(2) **Removal By Town.** Failure to remove an abandoned tower or antenna within such 90 day period shall be grounds for the Town to remove the tower or antenna at the owner's expense. The Town may place a lien upon the property on which the tower is located for the costs of removal.

(h) Permit Required.

(1) No tower shall be installed unless a permit is first obtained by the owner from the Town. The following shall be required as part of the application submittal:

a. A scaled site plan clearly indicating the location, type and height of the proposed tower and appurtenant equipment, any proposed and existing structures, adjacent land uses and structures, adjacent roadways, on-site parking and driveways, tower and equipment setbacks from property lines, and other information deemed by the Town to be necessary to assess compliance with this ordinance;

b. The setback distance between the proposed tower and the nearest residential unit, and residentially zoned properties;

c. The separation distance from other towers, antennas or sites approved for towers or antennas, that are either within the jurisdiction of the Town, or within one mile of the border thereof, including specific information about the location, height, and design of each tower;

d. Landscape plan showing specific plant materials;

e. Method of fencing, including location, materials and finished color and, if applicable, vegetative screening; and

f. Description of compliance with Section (f).

g. If a conditional use permit is also required, the application shall meet the requirements for applications for conditional use permits and the procedure for granting conditional use permits as set forth in the Town of Turtle Zoning Ordinance shall be followed.

(2) The applicant shall pay a fee to the Town with the application in an amount established by the Town Board.